

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In the Matter of:

)	
FONTROY et. al.)	
)	
Plaintiffs)	
)	
v.)	Action No: 02-2949
)	
)	
SCHWEIKER et. al.)	
Defendants)	

**PETITION FOR ATTORNEY FEES AND COSTS
PURSUANT TO 42 U.S.C. §1988**

Teri B. Himebaugh, Esquire ("Petitioner") hereby petitions the Court for attorney fees and costs as is permitted the prevailing party pursuant to 42 U.S.C. §1988 in a civil rights matter.

In support of this petition, Petitioner avers the following:

Petitioner, a member of this Court's Prisoner Civil Rights Panel, was appointed to serve as counsel for the Plaintiffs by this Honorable Court in early May 2004. Petitioner subsequently represented Plaintiffs during depositions and presentation of motions and oral argument of the case before the court. Petitioner withdrew from the case on or about March 9, 2005.

On May 3, 2007 this Court issued an Order in this case granting the Plaintiffs' injunctive relief. Plaintiffs were

therefore, 'prevailing parties' under the law.¹ Accordingly, as former counsel for the prevailing parties, Petitioner is entitled to an award of all attorney fees and costs which were directly and reasonably incurred in proving the actual violation of the Plaintiffs' rights. 42 U.S.C. § 1997(e)(d)(1)(A); *Riley v. Kurtz*, 361 F.3d 906, 916 (6th Cir.); *Morrison v. Davis*, 88 F. Supp. 2d 799, 810 (S.D. Ohio 2000).

Petitioner has set forth in the attached Exhibit a contemporaneously made accounting of all hours and costs expended in representation of the Plaintiffs in this case. Petitioner has calculated the fees based upon the limits contained in the Prison Litigation Reform Act (150% of the Criminal Justice Act rates).² Petitioner further avers that all the above cited fees were directly and reasonably incurred in proving the actual violation of the Plaintiffs' rights and therefore, she is entitled to the full amount

¹ It is irrelevant that Plaintiffs did not also receive monetary damages for purposes of this petition. Their goal of declaring the mail policy unconstitutional and enjoining the DOC from enforcing it was fully attained through the injunction. Furthermore, attorney fees and costs can be awarded in cases where injunctive relief has been granted. *Dannenberg v. Valadez*, 338 F.3d 1070, 1074-75 (9th Cir. 2003); *Walker v. Bain*, 257 F.3d 660, 667 n.2 (6th Cir.) cert. denied, 535 U.S. 1095 (2002); *Boivin v. Black*, 225 F.3d 36, 41 n.4 (1st Cir. 2000); *Carbonell v. Acrish*, 154 F.Supp.2d 552, 566 (S.D.N.Y. 2001).

² The Criminal Justice Act permits \$40 per hour non trial time and \$60 per hour trial time. Accordingly, the appropriate PLRA rates are \$60 non trial time and \$90 per hour trial time.

requested. 42 U.S.C. §1997(e)(d)(1)(A); *Riley v. Kurtz*, 361 F.3d 906, 916 (6th Cir.); *Morrison v. Davis*, 88 F. Supp. 2d 799, 810 (S.D. Ohio 2000). Petitioner is additionally entitled to 'fees on fees' for the time spent in preparation of this fee petition. *Hernandez v. Kalinowski*, 146 F.3d 196, 199-201 (3rd Cir. 1998).

For the foregoing reasons, Petitioner respectfully requests that this fee petition be granted.

Date: May 8, 2007

BY: TH1123
TERI B. HIMEBAUGH, ESQUIRE
ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE

I, Teri B. Himebaugh, Esquire, hereby certify that on
May 8, 2007, I served the instant Petition for Attorney
Fees and Costs, which was filed electronically and First
Class Mail, postage prepaid on the following:

John Shellenberger, Esq.
Office of the Attorney General
21 S. 12th St. 3rd Fl.
Philadelphia, PA 19107

Date: May 8, 2007

TH1123_____
TERI B. HIMEBAUGH, ESQUIRE

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ORDER

AND NOW, this day of

2007, upon consideration of Petitioner, Teri B. Himebaugh,
Esquire, Petition for Attorney Fees and Costs pursuant to
42 U.S.C. §1988, it is hereby ORDERED and DECREED that said
Petition is GRANTED.

The Defendants are hereby ORDERED to promptly provide payment to Petitioner in the amount of \$9147.82.

BY THE COURT

Timothy Savage, J.